

Town of Milford
Zoning Board of Adjustment Minutes
September 4, 2014
Case #2014-13
Variance
Bill King

Present: Zach Tripp, Chairman
Fletch Seagroves, Vice Chair
Laura Horning
Mike Thornton
Joan Dargie

Excused: Katherine Bauer – Board of Selectmen’s representative

Secretary: Peg Ouellette

The applicant, Bill King, of 223 South Street Properties, LLC, owner of Map 29 Lot 95 at 223 South St in the Commercial District, is requesting a variance from Article V, Section 5.05.4.:A to allow the subdivision of a 62,903 SF commercial lot with an existing commercial use with 20 feet of frontage.

Minutes approved on September 19, 2014

Zach Tripp, Chairman, opened the meeting and informed all of the procedures for the meeting. He read the notice of hearing into the record. The list of abutters was read. No abutters were present. Bill King, owner of 223 South Street, was present.

He then invited the applicant forward to present his case.

Bill King described the property as a commercial portion of the property containing 2,500 SF shop and a parking area, where they conducted auto repair work.

Z. Tripp commented that the way it ended up subdivided; the frontage was essentially a driveway.

B. King agreed. He believed it was 20 ft.

Z. Tripp pointed out on the plan where the lot and residential stop, leaving 20 ft of frontage which is a paved driveway out to the lot in back. It had plenty on the side but lacked frontage, which was the reason for the variance. He asked for questions from the Board.

M. Thornton asked whether a fire truck could get back there.

B. King replied that tow trucks bring cars back there. The drive was widened ten years ago for that.

L. Horning and M. Thornton discussed and asked questions of the applicant regarding the larger size of a fire truck, the turning radius, whether there was a platform for a turnaround existed.

B. King said there was a platform.

L. Horning pointed out the cars presently there would not allow a fire truck to turn around.

M. Thornton was concerned that a fire truck parked that close to a burning building would endanger the truck and firefighters.

L. Horning felt that might be an issue for the Planning Board

B. King stated he understood his next step after this would be going to the Planning Board.

L. Horning agreed, saying the Zoning Board had the option to defer to the Planning Board before making a decision. She was inclined to put a restriction on tractor trailers going in there. They could put it under advisement of the Planning Board, or they could make it subject to Planning Board approval.

M. Thornton commented there was plenty of land for cars to be moved further away from the building.

Z. Tripp stated there were wetlands.

L. Horning said the wetlands were not on Meridian's map.

J Dargie asked about the requirements for semi trucks being able to get in, if the business were left as it was and not subdivided.

L. Horning replied they had to look at the application and health, safety and welfare – it didn't matter what the lot was doing currently.

J. Dargie agreed, but the width of the driveway wasn't being changed. It would be an issue if the use were changed.

L. Horning said the use of the house was just changed to residential – it was now subdivided off from the commercial.

Z. Tripp asked if the current business was auto repair or just towing.

B. King said it was auto repair.

Z. Tripp stated that in the future, there are 15 or 20 allowed uses by Commercial C that could be put in, which is where the Planning Board might come in.

L. Horning said he couldn't continue the use the way it was current. For the last 35 years it has been maintained as a "Mom & Pop" shop, not a commercial lot, per se. It happened to be in commercial zoning in a mixed use area.

F. Seagroves asked if L. Horning was saying the Board couldn't answer #2 correctly, if there was a hazard.

L. Horning said she couldn't answer without advice from the Planning Board.

F. Seagroves and L. Horning agreed that if they grant this, it would be subject to Planning Board approval.

M. Thornton suggested that in future they should understand firefighters' needs because it appeared that they would have to block the street and run hoses down the property line because they can't get a truck back there now and be far enough away for the firefighters' safety.

F. Seagroves thought they could get a truck down there.

J. Dargie said the picture was a point in time that probably wasn't what it looked liked now and probably wouldn't in future.

M. Thornton said the cars could move back.

L. Horning was concerned with the swing of a semi going in there, more than a fire truck that has a better turning radius. She would like, subject to Planning Board approval, and she would make a note that the Planning Board address the issue of a semi getting in there.

J. Dargie asked whether semis got in and out of there now.

L. Horning said no.

J. Dargie asked if that wouldn't come into play if they were changing the use of the property. Building and Planning came into her shop and said she needed exit lights, etc.

L. Horning said her concern was the condition that was going to travel with the property so it will always have to be addressed.

J. Dargie was looking at it that it had that condition currently.

L. Horning disagreed.

J. Dargie said there was already a two-family there with a 20 ft driveway.

L. Horning said it hadn't been used as anything but a Mom & Pop shop, and that is why it had to go to the Planning Board after ZBA approval.

Z. Tripp commented it had a residence.

L. Horning said because it had a residence property attached. Now it was going to a full commercial lot which meant that production, manufacturing, anything could go down there.

Z. Tripp asked for any further comments from the Board.

Z. Tripp opened the meeting for public comment. There were none. He closed the public portion of the meeting.

He asked the applicant to read his application into the record.

1. Granting the variance would not be contrary to the public interest because:

The requested variance from the frontage is not unprecedented, see attached e-mail. The public interest is further met in that the requested frontage is still adequate for emergency (fire,police) access to the parcel if necessary

2. The use is not contrary to the spirit of the ordinance because:

This variance will not affect in any way the public health, safety, morals, general welfare or civil rights of the inhabitants of the Town of Milford. The requested relief will not degrade the area, affect the abutters, or change in any way the use of the parcel. The spirit of any well-drawn zoning ordinance is to preserve the integrity of neighborhoods and the relief requested will not diminish the integrity nor change the uses within this neighborhood

3. Granting the variance would do substantial justice because:

The variance is necessary in order that this parcel with two dissimilar uses be able to be subdivided. Dividing the two dissimilar (but allowable) uses of the existing parcel into two parcels with the dissimilar uses then separated is sensible and logical. It will allow the properties to be more easily sold in the future, and thus make less likely a situation where any owner, current or future, is holding onto the property longer than they desire, and thus not caring for the property in the best manner. These factors all contribute to substantial justice in allowing the relief requested.

4. The proposed use would not diminish surrounding property values:

Allowing the relief requested would not affect the surrounding properties negatively in any way, and thus would not diminish their value. Allowing the relief requested has the possibility of increasing the value of the surrounding properties by allowing separate ownership to devote resources to improving either or both of the properties, now or with future owners.

5. Denial of the variance would result in unnecessary hardship.

A). "Unnecessary hardship means that, owing to special conditions of the property that distinguish it from other properties in the area:

i). No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:

The general public purposes of the ordinance, including the provision concerning parcel size, is to ensure the public health, safety, morals, general welfare and civil rights of the inhabitants of the Town. Allowing the variance will not affect any of these purposes of the ordinance in any way, much less in any unfair or substantial manner. Thus, this prong of the hardship test is met.

ii) and; The proposed use is a reasonable one because:

B) If the criteria in Section (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance. A variance is therefore necessary to enable a reasonable use of the property because:

While applicant asserts that the criteria in paragraph 5.A.have been met, nonetheless applicant wishes to point out that the parcel is unusual in having both residential and commercial uses on one parcel. Strict conformance will not allow the logical, sensible and reasonable subdivision, and thus reasonable use, of the parcel.

Z. Tripp said the e-mail attached lists various residential and commercial frontage, one of which was commercial, Lot 19- 20, 206 Elm Street with 20 ft of frontage. He asked which business that was. It was agreed it was probably Hampshire Paper. The applicant didn't know.

J. Dargie and Z. Tripp said that was one with just a driveway going back. J. Dargie said they get in there with semis.

F. Seagroves said when they come out they use Elm St.

L. Horning commented that was a longstanding use of that property while this is a new use and new zoning ordinance.

J. Dargie needed clarification. This wasn't a new use.

L. Horning said it didn't matter; they still had to consider the zoning ordinance and take into consideration the criteria.

F. Seagroves said it was kind of grandfathered. Now they are asking for a variance, the board has to look at all the questions.

Z. Tripp said they have to consider that lot in that location.

L. Horning said, as well as the updated ordinance.

J. Dargie said with 20 ft frontage, he can't avoid going onto the neighbor's property.

L. Horning said NH Paper has been there many years and the ordinance had evolved since then.

M. Thornton asked whether a motion to table would be in order.

L. Horning said with Planning Board approval. She wouldn't be comfortable approving without Planning Board input.

Z. Tripp recommended going through the five criteria and if there was ones they wouldn't feel comfortable saying yes to, making a condition to get Planning Board approval. The others agreed.

Z. Tripp proceeded to discussion of the criteria.

1. Would granting the variance not be contrary to the public interest?

F. Seagroves – yes. Handbook mentions demonstrating public benefit if granted and showing no harm. Yes, there was no harm.

L. Horning – for her this was conditional on approval of Planning Board because it was dealing with public safety. Granting would not necessarily be contrary to public interest, subject to approval of the Planning Board. Z. Tripp said when they got to the questions they should make a motion to that effect. F. Seagroves said that should be done before they have a final vote they should make a motion and vote on the motion.

M. Thornton – it was not contrary to public interest as long as it was accessible and met the other criteria.

J. Dargie agreed.

Z. Tripp agreed. They are using a pre-existing driveway that has current use and didn't alter the essential character of the neighborhood pending the proper access for emergency vehicles.

2. Could the variance be granted without violating the spirit of the ordinance?

L. Horning said this was a question she would defer to the Planning Bd. It could be done without violating the spirit of the ordinance.

F. Seagroves said yes, with Planning Board approval because it is talking about health, safety, and welfare.

J. Dargie – Yes, with Planning Board approval.

M. Thornton – yes, with Planning Board approval.

Z. Tripp – this was more difficult for him. It is a pre-existing use, the same driveway and still commercial. Strictly by laws, it is important to get their input and approval for what the lot looks like now.

3. Would granting the variance do substantial justice?

M. Thornton – yes.

J. Dargie – yes – It would do substantial justice.

L. Horning - yes.

F. Seagroves – yes, with the stipulation of approval of the Planning Board.

Z. Tripp agreed. The only gain to the public that would outweigh loss to the individual would be safety concerns. Not too much of a safety concern because there is already access now and it is not less safe than now but understanding that additional uses could go in there. But they could grant it and do substantial justice.

4. Could the variance be granted without diminishing the value of abutting property?

J. Dargie – yes. The property exists how it exists today.

M. Thornton – yes. There is no impact on abutting property that isn't already there.

F. Seagroves –yes. It won't make a change to the abutting property value. It is just changing the property line.

L. Horning – She'd like it to be subject to Planning Board approval. Separating this lot is making it an entirely separate lot that lends itself to possibly high traffic in and out if it changes uses to light manufacturing; there are other uses that could go in there. That will affect the property in the adjacent residences. Subject to Planning Board approval it could be done without diminishing the value of other properties, taking into consideration the traffic flow and density.

Z. Tripp - There is already commercial use on that lot that could easily change. But there is already commercial across the street and down the street--a couple of used car and auto body shops and realtor. The area already has a mix of commercial, so he didn't think any commercial here would change the residential properties in the area.

5. Would denial of the variance result in unnecessary hardship taking the following into consideration:

A) i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property;

ii. The proposed use is a reasonable one.

B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

F. Seagroves –It more or less went along with he said with the previous variance. The road is there and it is the only place it can be. Special conditions are there. It would be hard to try to widen the road.

L. Horning – agreed. Denial could result in unnecessary hardship. Didn't have to answer b because because both a and ii apply. Proposed use is a reasonable one with the properties up and down the street. None of them are light manufacturing yet. No fair and substantial relationship exists between the general public purposes of the ordinance and the specific application of that property. The property isn't dissimilar in the area. There are similar properties with setbacks and frontage in that area.

Z. Tripp clarified L. Horning's mention of light manufacturing, which was not on the list of uses permitted in this district. He read the list from the list. He said regarding hardship the property had two uses on it. It was already non-conforming with 144 vs. 150, so the property is unique. Re reasonable use, it was subdivided in a reasonable manner, keeping the current driveway and line. Re fair and substantial relationship, you have a preexisting driveway and the same density. The variance could be granted without impacting density control, pending Planning Board approval.

Z. Tripp asked for a specific motion.

L. Horning made a motion that the approval of this application be subject to Planning Board approval. Should the rest of the Board pass it, they would be able to proceed.

M. Thornton seconded.

Vote on condition:

L. Horning – yes

M. Thornton – yes

F. Seagroves – yes

J. Dargie – yes

Z. Tripp – yes

The Board proceeded to vote.

1. Would granting the variance not be contrary to the public interest?

F. Seagroves – yes L. Horning – yes M. Thornton – yes J. Dargie – yes Z. Tripp - yes

2. Could the variance be granted without violating the spirit of the ordinance?

L. Horning – yes M. Thornton – yes J. Dargie – yes F. Seagroves – yes Z. Tripp - yes

3. Would granting the variance do substantial justice?

M. Thornton – yes J. Dargie – yes F. Seagroves – yes L. Horning – yes Z. Tripp - yes

4. Could the variance be granted without diminishing the value of abutting property?

J. Dargie – yes F. Seagroves – yes L. Horning – yes M. Thornton – yes Z. Tripp - yes

5. Would denial of the variance result in unnecessary hardship taking the following into consideration:

A) i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property;

ii. The proposed use is a reasonable one.

B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

F. Seagroves – yes L. Horning – yes M. Thornton – yes J. Dargie – yes Z. Tripp – yes

L. Horning made the motion to approve Case #2014-13 subject to the approval of the Planning Board.

F. Seagroves seconded the motion.

Final Vote

L. Horning – yes F. Seagroves – yes M. Thornton – yes J. Dargie – yes Z. Tripp - yes

Case #2014-13 was approved by a unanimous vote.

Z. Tripp informed applicant his request had been approved, pending approval of the Planning Bd.